

**REPORT - PLANNING COMMISSION MEETING
October 27, 2005**

Project Name and Number: Double Wood Golf Course (PLN 2006-00054)

Applicant: Double Wood Golf Course, LLC

Proposal: Annual review of the Development Agreement

Recommended Action: Find the developer in compliance with the Development Agreement

Location: Generally located between the terminus of Green Valley Road and Rancho Higuera Road, east of I- 680 in the Warm Springs Planning Area

Assessor Parcel Number(s): 519-1725-6-001, 519-1718-005, 519-1726-001, 519-1726-057, 519-1726-087

Area: Approximately 400 acres

Owner: Double Wood Golf Course, LLC

Agent of Applicant: James Tong, Double Wood Golf Course, LLC

Consultant(s): Paul Kozachenko, Attorney

Environmental Review: This review is not a project as defined in the CEQA Guidelines, Section 15378, no further action is required and none of the conditions of CEQA Guidelines Section 15162 requiring additional environmental documents exist.

Existing General Plan: Hill Face Open Space, Toe of the Hill and Open Space.

Existing Zoning: P-90-9, Planned District (Amendment I)

Existing Land Use: Undeveloped open space portion of Avalon Homes development

Public Hearing Notice: Public hearing notification is applicable. A total of 336 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Estates Terrace, Belmont Terrace, Alpine Drive, Woodside Terrace, Monte Sereno Terrace, Montecito Drive, Piedmont Terrace, Saint Francis Terrace, Rancho Higuero Road, Galindo Drive, San Clemente Terrace, Avalon Heights Terrace and Costa Mesa Terrace. The notices to owners and occupants were mailed on October 14, 2005. A Public Hearing Notice was delivered to The Argus on October 10, 2005 to be published by October 13, 2005.

Executive Summary: Double Wood Golf Course, LLC entered into a development agreement with the City on July 23, 2002 (PLN2002-00273). The Development Agreement requires Double Wood to submit a letter to the Community Development Director setting forth the developer's good faith effort with the terms and conditions of the agreement. As correctly stated in the developer's letter, during the review period 2004-2005, no obligations were required to be performed by Double Wood. Staff recommends the Planning Commission find the developer in compliance with the Development Agreement.

Previous Actions, Current Project Status: P-90-9, DA 90-1, GP-90-7 and EIR-90-31 were approved in May, 1990 for the Avalon residential project. The subject parcel was included in the Avalon Homes as private open space. On May 23, 1995, the City Council approved a planned district amendment (P-90-9H) to allow the consideration of a golf course on the subject property. On July 9, 1996, the City Council approved Double Wood's proposed amendment to the Planned District, P-90-9 (I), for the 18-hole golf course.

On October 11, 2001, the Planning Commission approved a preliminary grading plan and minor amendments to the Planned District to reflect changes resulting from requirements of the State Regional Water Quality Control Board (PLN 2001- 00360). On July 23, 2002, the City Council approved the Development Agreement (PLN2002-00273). An application for a grading permit has not been approved and no construction on the golf course project was initiated during the review period.

Development Agreement Description: The Development Agreement requires Double Wood to submit a letter to the Community Development Director setting forth the developer's good faith effort with the terms and conditions of the agreement. The major features of the agreement are summarized in the following section. The summary is followed with a section discussing the developer's compliance with the provisions of the agreement.

City Benefits:

Green Fee discount: City of Fremont seniors (60 years old and over) and juniors (18 years old or younger) are to receive green fee minimum discounts of 10 percent for play Monday through Thursday. If discounts are offered to other nonresidents, the discount for Fremont seniors and juniors will be 5 percent in addition to the discount offered to other seniors and/or juniors. For example, should a discount of ten percent be offered to all seniors, Fremont seniors will be given a 15 percent discount.

City Tournaments: Two City-sponsored tournaments per year will be provided. One-year in advance scheduling will be required.

Free Passes: Four free passes per month are to be provided to the City Manager for use by the City for business development purposes.

Advance Bookings: City residents will be allowed to book tee times one day in advance of non-residents if the City implements a program providing discounts and other benefits for residents of Fremont. The golf course operator will not be obligated to provide these one-day advance bookings if the City fails to initiate and operate such a program.

City Use of Clubhouse: The City would have the right to use the clubhouse facilities four times per year for City activities.

Cash Contribution: In the sixth year of course operation, Double Wood is required to pay the City \$22,500 during that year and each year after for nine more years, for a total of \$225,000.

Developer's Benefits:

Vested Rights: The Planned District, the preliminary grading plan and other City approvals (the "Existing Approvals") will control the development of the golf course. The agreement precludes applying to the project any regulation or similar action enacted after the July/August 2002 Development Agreement ("Subsequent Enactment") which prevents the construction of the golf course or would require Double Wood to obtain additional discretionary approvals that would be inconsistent with the terms of the agreement. With the vested rights provided by the Development Agreement, Double Wood is not subject to Hill Initiative of 2002 (Measure T), which was enacted by the voters in November 2002.

The agreement does not prevent the City from imposing new City-wide fees or modifying existing City-wide fees providing those fees do not conflict with the terms, spirit or intent of the agreement. Changes to or new uniform code regulations and new rules, regulations and official policies which do not conflict with existing ones and do not prevent or otherwise restrict the golf course construction are also allowed.

Building Moratorium: Should any building moratorium or similar measure be adopted during the life of the development agreement, the City would not apply it to the golf course to the fullest extent permitted under State law.

City Cooperation: The agreement required the City to cooperate with Double Wood in its efforts to get approvals from other public agencies. All the necessary permits or approvals from other public agencies have been obtained.

Development Agreement Term: Unless extended, the development agreement expires in 2012. The City benefits related to the golf course operations would continue on for the life of the course, unless modified or deleted by mutual agreement.

Compliance Analysis: All of the developer's obligations are triggered by the start of golf course operations. Since the golf course has not been constructed, none of the requirements summarized above were required during the 2004-2005 review period. Thus, staff recommends the developer be found to be in compliance with the Development Agreement.

Environmental Review: In April 1991, the City Council certified the original EIR-90-31 as complete in conjunction with approval of the Avalon development Planned District P-90-9. EIR-90-31A, the subsequent environmental impact report (SEIR) for the golf course was recommended as complete by the Planning Commission on May 26, 1996 and certified by the City Council on July 9, 1996. On March 28, 2000, the City Council denied an appeal of the Assistant City Manager's decision to prepare an addendum to the SEIR. On April 18, 2000, the Assistant City Manager approved an addendum to the SEIR for the golf course to reflect changes made to the mitigation measures required by the State Regional Water Quality Control Board. The SEIR and its addendum cover this project. This review is not a project as defined in the CEQA Guidelines, Section 15378, no further action is required and none of the conditions of CEQA Guidelines Section 15162 requiring additional environmental documents exist.

California Tiger Salamander: Condition 40 of the planned district approval, required Double Wood to relocate California tiger salamanders on the site to an experimental pond habitat on open space lands above the proposed golf course site. As a part of the 2003-2004 annual review, Double Wood reported that the California Tiger Salamander had been listed as a threatened species so that the mitigation measures previously approved for the California Tiger Salamander would have to be approved by the U.S. Fish and Wildlife Service. Double Wood now reports that the Service has not granted permission to relocate the salamanders. Therefore Double Wood has terminated the relocation program. Under provisions of Condition 40, if Double Wood is unable to receive permission to relocate the salamanders, it would be relieved of the relocation obligation.

Mitigation Monitoring Report: The following material is provided as information only, with no action required by the Planning Commission. Double Wood is required to periodically submit a report on the implementation of mitigation measures required by the City and other public agencies. Some mitigation measures are required prior to issuance of the grading permit, others are triggered by actual construction and some involve monitoring of the course and restored creek habitat ten years after construction. Only one mitigation measure, related to the California tiger salamander discussed above has been triggered so far.

Creek B Mitigation Monitoring Report: Creek B located along the southerly boundary of the golf course, was damaged by landslides after severe rain storms in 1998. Mission Peak Development Company, the developer of the Avalon Homes residential project that lies adjacent to the golf course, also owned the golf course property, which at the time included Creek B. Avalon Homes was required by the Corps of Engineers, California Department of Fish and Game, and the California Regional Water Quality Board to repair Creek B and its riparian habitat. A restoration plan, including a mitigation monitoring plan, was approved by the above mentioned public agencies by mid 2001, and a grading plan (PLN 2000-00316) was approved by the Planning Commission on May 24, 2001. Double Wood Golf Course has taken over responsibility for the Creek Restoration Project. The annual monitoring required for this creek restoration project requires staff approval. The following report on the creek restoration is provided to the Planning Commission for information only.

Work on the restoration began in late summer of 2001, temporarily stopped during the rainy season of 2001-2002 and essentially completed by March 2003. Double Wood has submitted the fourth annual mitigation monitoring report, indicating that the creek bed of both the upper segment and the lower segment are stable with minor surficial changes. A letter from the City Engineer requires that the minor erosion areas be repaired and action be taken to prevent more serious erosion. Overall, this year's report found the annual grass height and density to be greater than last year because of the late rainfall this spring. Woody vegetation such as willows sycamores and elderberry bushes appear to be doing well with an overall survival rate of 83%. The City Engineer is preparing a letter approving this year's annual review.

Response from Agencies and Organizations: No comments have been received.

Enclosures: Developer's Compliance letter dated August 18, 2005 (informational).

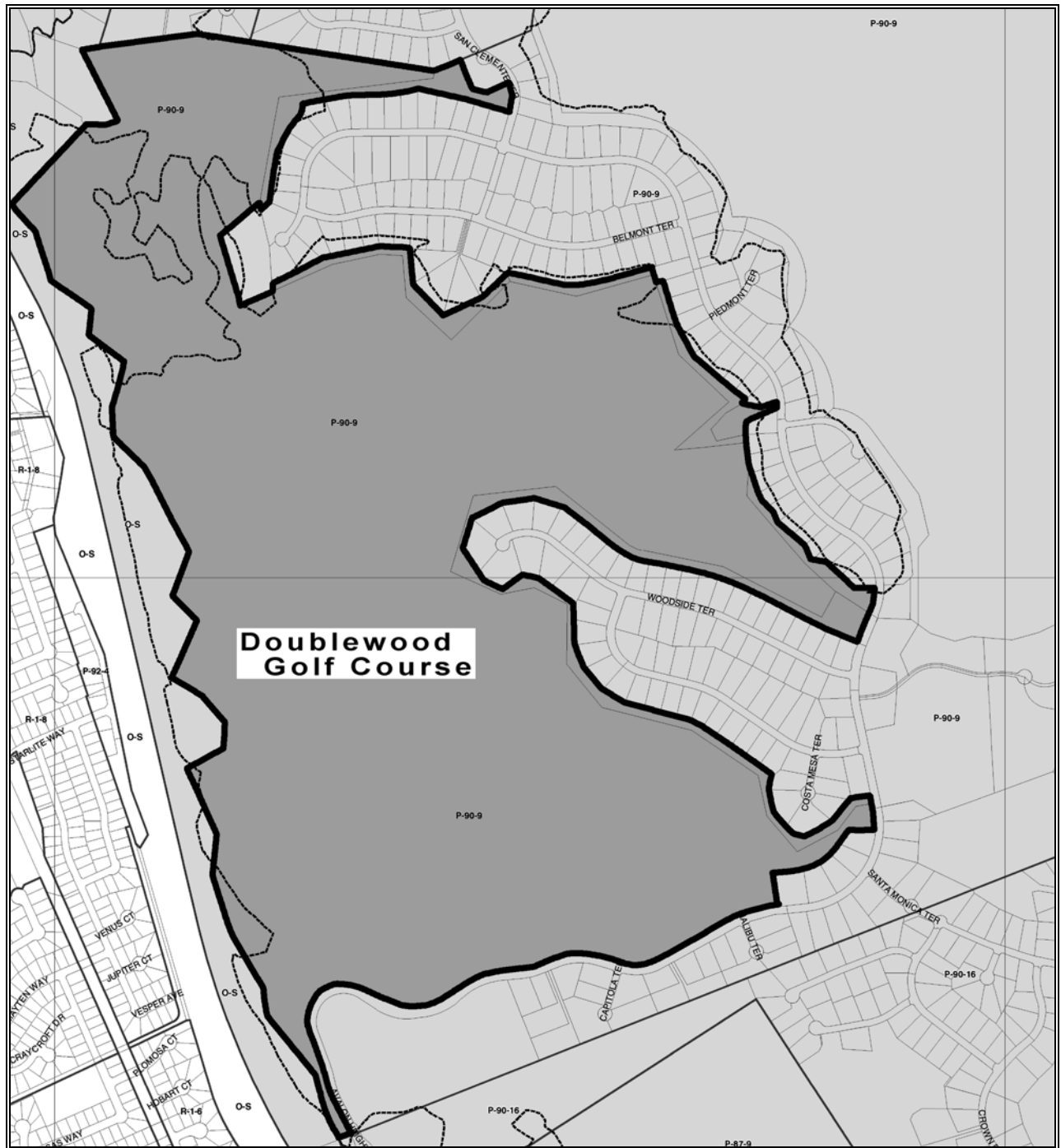
Exhibits: None

Informational Exhibits: General Plan and Zoning Exhibits.

Recommended Actions:

1. Hold public hearing.
2. Find the annual review of the Development Agreement is not a project as defined in CEQA Guidelines Section 15168 and that no further environmental document is needed for this review.
3. Find on the basis of evidence in the record and presented at the public hearing, that for the review period of 2004-2005, the developer has complied with its obligations under Development Agreement PLN2002-00273 between the City of Fremont and Double Wood Golf Course, LLC.

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan
Shaded Area represents the Project Site

